IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO : 20451 of 2000

Between:

G.Chandrasekhar Reddy S/o. G.Pedda Narayana Reddy
R/o. Kodur Village, Peddavadugur Mandal, Anantapur District.

..... PETITIONER

AND

1 The District Collector, Anantapur.
2 The Joint Collector, Anantapur.
3 The Revenue Divisional Officer, Anantapur.
4 The Mandal Revenue Officer, Peddavadugur Mandal, Anantapur

District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ of certiorari calling for the records relating to the order of the 1st respondent passed in D.Dis.K4/12000/2000 dated -9-2000 confirming the order of the 2nd and 3rd respondent passed in D.Dis.K4/3793/99 dated 28.1.2000 and D.Dis.D1/CS/2248/98 dated 21.5.99 and quash the same.

Counsel for the Petitioner: MR.O.MANOHER REDDY

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court made the following:

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.20451 OF 2000

ORDER:

The petitioner was appointed as a fair price shop dealer of Koduru village, Peddavadugur Mandal of Anantapur District. The Mandal Revenue Officer of said Mandal sent a report to the appointing authority, the third respondent herein, informing that the petitioner is involved in two criminal cases being crime No.44 of 1998 under Section 307 of Indian Penal Code, 1860 (IPC) and crime No.54 of 1998 under Section 107 of Code of Criminal Procedure, 1973 (Cr.P.C). Based on the report, initially third respondent suspended the authorization of the petitioner but later, after following due process, cancelled the authorization. Aggrieved by the same, the petitioner preferred an appeal under Clause 17 of the A.P.Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973 (hereafter called, the Control Order). The said appeal was dismissed by the second respondent on 28.01.2000. Feeling aggrieved by the same, he preferred revision under Clause 18 of the Control Order. Among other grounds, he also contended that S.C.No.200 of 2000 arising out of crime No.44 of 1998 ended in acquittal in favour of the petitioner and that the order passed under Section 107 of Cr.P.C., in crime No.54 of 1998 ceases to operate after a period of six months under Section 116(6) of Cr.P.C. The revisional authority, the first respondent herein, however, dismissed the revision on the ground that the character and antecedents of the petitioner are not up to the mark and therefore he is not entitled for restoration of his authorization as a fair price shop dealer. Reliance was placed by the first respondent on G.O.Ms.No.198 dated 05.02.1996.

It is mainly contended that the petitioner's authorization was cancelled only on the ground that he is involved in two criminal cases. When he is acquitted in criminal case, the charge gets wiped out and therefore he cannot be penalized. It is also contended that when an order is passed against the petitioner under Section 107 of Cr.P.C., the said order would be enforced for a period of six months and after that the petitioner cannot be penalized. Reliance is placed on sub-clause (4) of clause (3) of the Control Order which reads as under.

> (4) The Appointing Authority may, at any time whether at the request of the

authorized fair price shop or authorized establishment *suo motu* after making such enquiry as may be deemed necessary, and for reasons to be recorded in writing, and to, amend, vary, suspend or cancel the authorization issued or deemed to be issued to him under this clause.

Notwithstanding anything contained in Sub-clause (4) above where a Fair Price Shop dealer has been convicted by a Court of law in respect of contravention of any order made under Section 3 of the Essential Commodities Act, 1955 (Central Act 10 of 1955) relating to any of the Commodities mentioned in the Schedule to this order, the appointing authority shall, by order in writing, cancel his authorization.

Provided that where such convicting is set aside in any appeal or revision, the appointing authority may, on application in form-1 made by the person whose authorization has been cancelled, re-issue the authorization to such person.

The petitioner was admittedly appointed as a fair price shop dealer long back. Therefore, the power given to the appointing authority to deny authorization to a person whose antecedents and character are not upto the mark may not be available to the appointing authority/appellate authority or revisional authority, when the authorization of a dealer is cancelled midway on the ground that he is involved in a criminal case, in which he is acquitted later by the criminal Court. As seen from the provisions extracted hereinabove, even where dealer's conviction is set aside in appeal, such a dealer is entitled for reissuance of authorization. Pending criminal trial, the petitioner was pursuing his remedy before appellate authority as well as revisional authority, and therefore the application of the guidelines in G.O.Ms.No.198 dated 05.02.1996 amount to dissection of the petitioner's case on irrelevant grounds which cannot be sustained. The same amounts to misdirection in law. By the time the revisional authority considered the case of the petitioner, he was virtually acquitted in both the cases and therefore the impugned order is not sustainable as the same is vitiated by error apparent on the face of record.

In the result, for the above reasons, the writ petition is allowed and the impugned order passed by respondents 2 and 3 as confirmed by the first respondent are set aside. The fair price shop authorization in favour of the petitioner shall be restored within a period of two months from the date of receipt of this order.

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(V.V.S.RAO,J)

13.06.2005.

pln

Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Monday, the thirteenth day of June, 2005.

To

1. The District Collector, Anantapur.
2. The Joint Collector, Anantapur.
3. The Revenue Divisional Officer, Anantapur.
4. The Mandal Revenue Officer, Peddavadugur Mandal, Anantapur District.
5. Two CCs to Government Pleader for Civil Supplies, High Court Buildings, Hyderabad (OUT).
6. 2 CD copies.
7. 1 CC to MR.O.Manoher Reddy.